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January 12, 1994

L--- B---, President
S--- L---
XXX --- --- Road #XXX
--- ---, CA XXXXX

BURTON W. OLIVER
Executive Director

RE: S--- L---
(No Permit No.)
Taxability of "C--- F---"

Dear Mr. Balzer:

This is in response to your letter of November 3, 1993, which was received by the Legal Division in December, in which you request our opinion about the applicability of sales and use tax to the publication "CPO Family" published quarterly. The publisher is C--- F--- which is registered with the Internal Revenue Service under Internal Revenue Code Section 501(c)(3). It is your understanding that the cost of the publication is built into the membership dues, and represents a small portion of those dues. Currently, there is one paid advertiser.

Revenue and Taxation Code Sections 6362.7 and 6362.8¹ describe how periodicals may be distributed exempt from sales and use taxes. Section 6362.7 states in pertinent part the following:

"Newspapers and periodicals distributed without charge; periodicals.

(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such newspaper or periodical.

(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of

¹ All further section references are to Revenue and Taxation Code.

tangible personal property which becomes an ingredient or a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

(c) For purposes of this section, 'periodical' means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period."

Section 6362.8 states in pertinent part:

"Newspaper and periodicals distributed by nonprofit organizations.

(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use or other consumption in this state, of tangible personal property that becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months, or any such newspaper or periodical.

(b) This section shall apply only with respect to any of the following:

(1) Any newspaper or periodical that is published or purchased by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is distributed to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.

(2) Any newspaper or periodical that is published by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and does not receive from, or accept, any commercial advertising.

(3) Any newspaper or periodical distributed by a nonprofit organization for which both of the following apply:

(A) Distribution is to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed."

"C--- F---" appears to fit the definition of a periodical as it is issued quarterly and contains news and information for the C--- membership. Since we had only one issue to review, we assume that each issue bears a relationship to prior and subsequent issues and each issue is similar in style and format. For a further clarification of "periodical" please review the enclosed proposed Sales and Use Tax Regulation 1590(a)(2). If any of the issues of "C--- F---" are distributed without charge, then any component part is exempt (Section 6362.7). Since C--- F--- is tax-exempt under IRC Section 501(c)(3) and "C--- F---" is distributed to C--- F---'s membership in return for a membership fee, then the periodical is tax-exempt under Section 6362.8(b)(1) for purposes of distribution to members and contributors. Sales of copies to non-members will not be exempt if they contain any paid commercial advertising.

If you need anything further, please do not hesitate to write again.

Sincerely,

Carl J. Bessent
Staff Counsel

CJB/md

Enclosure

cc: Mr. L--- C---, President
C--- F---
P.O. Box XXXXX
---, CA XXXXX